

Brown & Root, Inc.¹ and Charleston Building and Construction Trades Council, AFL-CIO. Case 9-RC-16211

June 7, 1994

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

Upon a petition for election filed under Section 9(c) of the National Labor Relations Act, a hearing was held on various dates in April-July 1993 before a duly designated hearing officer of the National Labor Relations Board. On August 10, 1993, pursuant to Section 102.67(h) of the Board's Rules and Regulations, this case was transferred to the Board for decision. The Employer and the Petitioner have filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record in this case, including the posthearing briefs filed by the parties, the Board makes the following findings:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer, Brown and Root, Inc., is a Delaware corporation engaged in the business of engineering, maintaining, and constructing commercial petrochemical projects for E. I. DuPont at Belle, West Virginia; for Rhone-Poulenc at Institute, West Virginia; and for Union Carbide at Institute and South Charleston, West Virginia. The Petitioner, Charleston Building and Construction Trades Council, AFL-CIO, seeks, and the Employer has agreed to, a unit comprising approximately 600 construction and maintenance employees engaged at the three construction sites.

At the hearing, the parties agreed that the following classifications should be included in the unit:

Laborers; Carpenters and Helpers; Rodmen; Concrete or Cement Finishers and Helpers; Block Masons and Helpers; Instrument Men; Reinforcing Iron Workers and Helpers; Pipe Fitters and Helpers; Structural Welders or Structural Iron Welders; Pipe Welders; Structural Steel Workers and Helpers; Heavy Equipment Operators; Light Equip-

ment Operators; Millwrights and Helpers; Insulators and Helpers; Scaffold Builders and Helpers; Asbestos Removal Workers and Helpers; Power Equipment Operators; Electricians and Helpers; Instrument Fitters and Helpers; Mechanics and Helpers; Painters and Helpers; Material Helpers; Warehousemen or Warehouse employees.

Also at the hearing, the parties stipulated to the inclusion of the following individuals:

DuPont: Dana Mikeal, James Janey, Randall Drake, sketchers; Jeff Bowen, Patrick Bero, tool-room; Alan Brightwell, warehouse.

Union Carbide: Dwight Ford, pipefitter helper/material helper; Mark Drake, warehouse helper; Bruce Bultman, warehouse; Mike Clark, light equipment operator; Cliff Reichard, tool-room; Keith Haynes, light equipment operator; Mike Beckett, warehouseman; William Rhodes and Michael Short, instrumentmen; John Huddleston, rodman; Mike Stone, material helper; Tom Grant, warehousemen; Ronald Cook, John Fisher and Warren Breckenridge, leadmen.

Rhone-Poulenc: Bob Howland, instrument fitter; Lee Crosby, rigger.

In addition, the Petitioner in its posthearing brief concedes that the following individuals, whom it sought to exclude at the hearing, should be included:

Bryan Winter, Jerry Medley, Gary Hedrick, tool room attendants; Marta Spry, warehouse clerk; Richard Burdette, Gene Singleton, Stan Jones, warehousemen; Ann Elliott, electrician helper.

The parties also stipulated at the hearing to exclude the following classifications and/or individuals:

DuPont: Supervisors:

Project Manager; Training Coordinator; Office Manager; Safety Medic; Party Chief; Technical Services Supervisory Manager; Training Coordinator

Foremen: Electrical; Scaffolding; Insulation; Instrument Fitter; Laborer; Carpenter; Pipe fitters; Rigging; Asbestos.

General Foremen: Carpenter; Electrical; Laborer; Rigging

Superintendents: Electrical and Instrument Department; Civil Department; Technical Services Supervisory Manager; Mechanical Department; Safety.

Officer Clericals: Timekeeper; Timekeeper Clerk.

UNION CARBIDE: Supervisors:

Project Manager; General Superintendent; Civil Department Superintendent; Electrical and Instrumentation Department Superintendents; Mechanical Department Superintendents; Technical Serv-

¹The name of the Employer appears as amended at the hearing.

ices Manager; Buyer; Safety Supervisor; Chief Timekeeper; Warehouse Supervisor; Party Chief.

General Foremen: Structural Iron Worker/Rigger; Pipe; Electrical and Instrumentation; Carpenters; Administrative Manager; Rigging; Mechanic.

Foremen: Insulation; Electrical; Paint; Pipe; Laborer; Rigging; Carpenter; Structural Iron Worker; Instrumentation; Warehouse;

Professionals: Engineer; Planner/Scheduler.

Office Clericals: Margaret Guyer; Lisa Hanlon; Timekeeper Trainee; Timekeeper Clerk; Safety Clerk; Melissa Parsons, Clerk; Connie Blake, Clerk.

Miscellaneous: Russell Gilbert, Material Coordinator; Gene Flowers, Material Control; Technical Specialists.

RHONE-POULENC: Supervisors:

Project Manager; Assistant Project Managers; Superintendent Civil Department Rhodimet; Superintendent Electrical and Instrumentation Rhodimet; Superintendent Clerical and Instrumentation IMP and AG; Superintendent Mechanical Rhodimet; Superintendent Mechanical IMP, and AG; Superintendent Structural Iron Department, IMP; Superintendent Administrative Department, Rhodimet; Buyer; Safety Supervisor; Technical Services Manager; Technical Services Manager IMP; Assistant Technical Services Manager; Administrative Manager; Safety Supervisor; Cost Specialist; Scheduler; QA/QC Superintendent; Superintendent Automated Craft Ledger System; Safety Instructor.

General Foremen, IMP/AG project: Instrument; Pipe; Electrical; Carpenter.

Foremen, IMP/AG project: Insulation; Reinforced Ironworkers; Structural Ironworkers; Millwright; Pipe; Rigger; QA/QC.

General Foreman/Rhodimet: Carpenter; Electrical; Instrument; Structural Ironworker; Millwright; Pipe; Paint.

Foremen/Rhodimet: Carpenter; Dirt; Electrical; Instrument; Reinforced Ironworker; Structural Ironworker; Millwright; Pipe; Rigger; Warehouse.

Professionals: Staff Engineer; Cost Engineer; Subcontract Coordinators; Accountants; Systems Turnover; Scheduler.

Office Clericals: Tammy Franklin, Project Secretary; Angela Bryant, Melita Morgan, Timekeepers; Teresa Woodrum, Dora Sheffield, William Tolbert, Todd Jennings, Ed Litch, Cost Specialists; Amy Strange, Clerk; Francine Willis; Vicki Priddy.

There remain at issue the supervisory status of 14 individuals, and whether 29 other individuals are excluded from the unit as office clericals, or included in

the unit as plant clericals. Also at issue is whether the *Daniel*² eligibility formula is applicable.

Supervisor

The Petitioner contends that *leadmen, party chiefs, construction inspectors, safety inspectors*, and the *safety trainer* should be excluded from the unit on the ground that they are supervisors. The Employer contends that they are not supervisors. The term "supervisor" is defined in Section 2(11) of the Act as:

Any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Applying the criteria set forth in Section 2(11), the Board finds, as explained below, that the Petitioner has failed to demonstrate that any of the disputed individuals possess true indicia of supervisory authority.

Leadmen: Coy Dowdin, Charles Runyon, Randy Greer, and Robert Sayre: The record shows that leadmen operate under the supervision of a field foreman in a particular craft who, in turn, is supervised by a general foreman and superintendent. They share the same hours and benefits as their crewmembers, but receive 25 to 50 cents an hour wage premium for being leadmen. In the morning before work commences, and again after lunch, each leadman assembles his crew to receive or transmit the foreman's work assignments and safety instructions. Depending on the work schedule, leadmen usually work alongside crewmembers for some part of the day. When not "working on their tools," leadmen observe the crew's work performance and adherence to safety procedures and assist the crew in keeping an uninterrupted work flow by obtaining any needed tools, materials, or supplies to perform the job. They seek out the foreman in the event of any nonroutine occurrences.

According to the record evidence, three leadmen substituted for an absent foreman or supervisor during the 6-month period prior to the hearing: Dowdin filled in on three or four occasions, Runyon filled in 1 week for his foreman and a few days for a supervisor in the calibration shop, and Greer substituted for his foreman when the foreman was absent for 2 days. It is, however, unclear on the record what, if any, supervisory authority was exercised by these leadmen in their foremen's or supervisor's absence. An employee who substitutes for an absent supervisor is not deemed to be

²*Daniel Construction Co.*, 133 NLRB 264 (1961), as modified 167 NLRB 1078 (1967).

a supervisor unless his exercise of supervisory authority is both regular and substantial.³ Therefore, even assuming these leadmen exercise statutory supervisory authority when substituting, it has not been established that their assumption of supervisory duties is anything other than insubstantial, irregular, and sporadic. The evidence of their substitution is thus insufficient to clothe them with supervisory authority.

The Petitioner contends that *Dowdin* is authorized to permit his asbestos removal employees to leave work early, and that they must seek his permission to use the restroom. According to the record evidence, however, Dowdin's foreman, Donny Boylen, not Dowdin, authorizes or denies employees' early leave requests. The record also shows that employee use of the restroom is not dependent on Dowdin's permission. Thus, Dowdin, as the OSHA-competent individual for asbestos removal work, is responsible for erecting containments and barricades to insulate the worksite from asbestos contamination and for seeing that OSHA requirements are met prior to the commencement of work. In the foreman's absence, Dowdin stations himself outside the containment to observe the work and to prevent leakage of contaminants. When employees need to use the restroom, Dowdin does not give permission but merely makes sure that they remove their special clothing and personal protective gear; he then transports them to the shower facility prior to their using the restroom.

The Petitioner asserts that *Runyon* authorizes early leaves and "is the only individual other than the foreman who has the authority to complete work permits authorizing work to proceed." The record shows that on one occasion when foreman Kenny Leaptrot was absent or unavailable, Runyon accompanied one of his crew to the office and signed an early leave slip. One isolated instance, however, is insufficient to establish supervisory authority.⁴ With respect to his completing work permits authorizing work to commence, Runyon explained that Union Carbide requires that a work permit be filled out and signed by one of its own officials prior to commencement of work at each new location, and either he or Leaptrot attends to that requirement. There is no evidence that the preparation of a work permit involves any independent judgment or discretion with respect to employee assignment or direction of work. We therefore find that completing work permits is merely a ministerial act which does not confer supervisory authority.

The Petitioner takes the position that *Greer* is a supervisor because he has independently assigned particular individuals to crews, has removed and disciplined employees, and has rejected completed construction work and ordered it to be redone. Greer testi-

fied that he first asks for the foreman's preferences in making crew assignments. However, the foreman frequently permits Greer to assign employees to a particular crew based on compatibility of the employees and the skills required to do the job, i.e., a journeyman would be assigned to "hang iron," while a helper would only be assigned assisting roles. On these facts, we find that Greer's crew assignments do not require the independent judgment necessary for supervisor status but, instead, are based on his experience as leadman in working with various crewmembers, as well as on whether the employee has the craft skill required for the particular job.⁵ With respect to discipline, the record reveals that on one occasion Greer observed a member of his ironworker crew performing work on an elevated structure in an unsafe manner and ordered him off the structure. When Greer joined the employee on the ground, Greer's foreman interceded, issued an oral warning to the employee, and admonished him to heed Greer's safety instructions in the future. Thus, the record shows that it is the foreman, not Greer, who disciplines employees. The same is true of ordering work redone. Thus, according to the record, on one occasion Greer reported a substandard welding job to his foreman, who decided, after an independent investigation, to have the work ripped out and redone.⁶

The Petitioner argues that *Sayre* exercises supervisory authority by having crewmembers replaced, selecting individuals for particular work tasks, and recommending employees for promotion, which recommendations are followed. The record shows that Sayre has no responsibility for employee evaluations. Instead, Sayre merely reports to his foreman about crewmembers and makes informal suggestions with respect to promotions. Although Sayre claimed his "suggestions" had a "positive" effect, the only evidence in that regard is that one employee received a raise after Sayre had "suggested" that the employee be promoted. In these circumstances, we find that Sayre's suggestions do not constitute effective recommendations for employee promotions. There also is no record support for the Petitioner's contention that Sayre replaces or assigns crewmembers independently. Rather, the record shows that Sayre operates in a manner similar to Greer, discussed above, and in fact both have the same foreman. With respect to crew replacement, Sayre testified that he mentioned to his foreman when he first took over his crew that some members were not operating like a team; thereafter, the foreman switched some people around. Thus, Sayre's "authority" to determine crew placement is, like Greer's,

³ See, e.g., *Hexacomb*, supra.

⁶ The fact that leadmen may function like quality control employees, in inspecting and reporting the work of others, does not confer supervisory authority on them. *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988).

³ *Hexacomb Corp.*, 313 NLRB 983 (1994).

⁴ *Ferralloy West Co.*, 277 NLRB 1083, 1085 (1985).

based on employee compatibility and is ultimately under the control of the foreman. Moreover, with respect to assignment of work, the record shows that Sayre, like Greer, is bound by what craft skills are necessary for the job. Based on these facts, we find that Sayre does not possess nor exercise any statutory supervisory authority.

Party Chiefs: Phillip Kidd and Leonard Ladner: Kidd and Ladner are actively working instrumentmen who head up survey crews at the various Rhone-Poulenc projects under the supervision of Mark McFadden, the Employer's technical services manager. (Kidd also reported to Mechanical Superintendent John Penrod at the IMP project on which he was working at the time of the hearing.) Kidd and Ladner do not have college degrees and they "brass in" and "brass out" each day as do other craft employees;⁷ but they receive premium wage rates—roughly equivalent to those of a general foreman. In describing his supervision of Ladner, McFadden testified that he would sit down with Ladner once a week to lay out the work to be done that week by Ladner and his rodman. On "several occasions" Ladner has had to alter the order of work because of "field conditions," according to McFadden; but usually "his work is pretty well laid out for him."

The Petitioner argues that Kidd's and Ladner's high wages, direction of field crews, and what it describes as their "discretion to change any work task on a daily basis without approval from any other supervisory employee" render them statutory supervisors. We disagree. Kidd's and Ladner's premium pay is merely a reflection of their greater technical skills and not an indicium of supervisory status. It is well established that the exercise of authority on the part of more skilled and experienced employees (such as typical leadmen in crafts) to assign and direct other employees in order to assure the technical quality of the job does not in itself confer supervisory status.⁸ Here, the Petitioner has failed to show that Kidd's and Ladner's assignment and direction of crewmembers—including the occasional changes they may make in the ordering of work in response to "field conditions"—is anything more than the exercise of their greater experience in directing less skilled employees. In these circumstances, we find that the party chiefs do not possess or exercise any supervisory authority.⁹

⁷ See fn. 16, *infra*.

⁸ *United States Gypsum Co.*, 118 NLRB 20, 29–30 (1957); *Northern Chemical Industries*, 123 NLRB 77, 79 (1959); *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988).

⁹ The Petitioner also notes that an individual with the same title and performing the same function at the DuPont Belle site was stipulated by the parties to be excluded as a supervisor. The Board, however, predicates its determinations of supervisory status on record evidence; accordingly, the parties' stipulation with respect to another individual is irrelevant to a determination of Kidd's and

Construction Inspectors: Tim Lane and Melvin Todd: Lane and Todd work under the supervision of Mark Anderson, the Employer's technical services manager for the Union Carbide project. Both are highly experienced and receive wages equal to or higher than those of the construction foremen, as well as the more liberal professional, technical, and administrative (PTA) vacation benefits.¹⁰ They inspect worksites to ensure that mechanical fit-ups are proper and observe that safe work procedures are being followed. If Lane or Todd notice any irregularity on the job, he is required to notify the craft foreman and to follow up, if it is not corrected, by filing an irregularity report form. Lane and Todd specifically monitor activities and observe welding tests conducted by the pipe or mechanical departments. Todd inspects the welds—made by new hires for certification or existing personnel for recertification—and reports the results after matching the welds against preestablished guidelines.

The Petitioner argues that Lane and Todd are supervisors because they exercise independent judgment in rejecting fit-ups, reporting uncorrected irregularities on the job, and refusing to certify welders, all of which result in disciplinary action or adverse personnel decisions. We note, contrary to the Petitioner, that the mere reporting of unsatisfactory conditions is not an indicium of supervisory authority unless it becomes the basis for future disciplinary action.¹¹ Here, there is no evidence that any disciplinary action has ever been taken as a result of Todd and Lane's reports. With respect to the welding tests, the record shows that Lane and Todd's exercise of independent judgment, based on their expertise and experience, is confined to grading the quality of test welds against preestablished standards or guidelines for measuring acceptable welds. Such testing and grading is recognized as not reflecting the exercise of true supervisory authority.¹²

Safety Inspectors: Garland Bentley, John Turley, Al Mahaffey, Phillip Hollis, and Mark Herald: Safety inspectors monitor safety procedures, equipment, and conditions on the Rhone-Poulenc and Union Carbide projects, under the supervision of Safety Supervisors James Thorn and Mike Overholt, respectively. Their hourly wages are similar to journeymen craftsmen, but they too receive PTA vacation benefits. Hollis is responsible for arriving one-half hour early on the Rhodimet project to monitor the entire site for gas leaks prior to construction activity. Mahaffey and Turley issue "hot work permits" prior to jobs involving welding or use of any spark-producing tools. All

Ladner's status. *Northcrest Nursing Home*, 313 NLRB 491, 497 (1993).

¹⁰ PTA employees accrue vacation benefits each month; craft employees, by contrast, do not accrue vacation benefits until the fourth year.

¹¹ *Northcrest*, *supra* at 7.

¹² See *Hogan Mfg.*, 305 NLRB 806, 807 (1991) (Mouldenhauer).

of them spend most of their day in the field monitoring employee work habits and auditing the use and condition of safety equipment. They issue oral warnings to employees who are not using safety equipment, such as goggles; they can stop work from being performed in an unsafe manner; and all, except Turley, the newest inspector, have issued written safety violation citations for unsafe work practices by craft employees. Safety citations customarily trigger independent investigation by the safety supervisor and the project manager, who decide whether to take disciplinary action.

The Petitioner asserts that the safety inspectors' written citations are effective recommendations for discipline because of the great weight that management places on them. Record testimony, however, reveals that citations by themselves do not result in disciplinary actions. Even viewing them as recommendations for disciplinary action, it is clear that no disciplinary decisions are made without independent investigation by acknowledged supervisors. *Ball Plastics Division*, 228 NLRB 633, 634 (1977); *Northcrest Nursing Home*, supra.

Safety Trainer: Jeff Hammond: Hammond, who is supervised by Overholt on the Union Carbide Institute and South Charleston projects, provides training on plant safety procedures for new hires and refresher or annual training for craft employees. The training concludes with safety tests, composed of true-false, fill-in, and multiple choice questions that Hammond grades according to an answer key. If there is any doubt concerning how an employee answered a question which would affect whether the employee passed or failed, Overholt resolves the discrepancy. On one occasion Hammond escorted a student who had fallen asleep in class to the safety supervisor; however, no disciplinary action resulted, and the student was permitted to take (and pass) the test. On days when no training is scheduled, Hammond tours in the field with safety inspectors in preparation for advancement to an inspector position. If Hammond observes a safety infraction in the field, he can only report it to a safety inspector.

The Petitioner contends that Hammond has developed test questions and has discretion in grading them, and that he can also effectively recommend that an employee be removed. Although the record shows that Hammond developed scaffolding and fall-prevention quizzes which Overholt accepted with modifications, the record evidence also indicates that Hammond has no discretion in scoring tests.¹³ The record evidence also indicates that Hammond has no authority to remove or to discipline an employee with respect to the employee's conduct during training or performance on the standardized test. Rather, it appears that that authority resides in the safety supervisor.

Clericals: The agreed-on unit description specifically excludes "office clerical employees." The remaining disputed placement issues involve the Petitioner's contention that the following employees should be excluded as "office clericals" and the Employer's assertion that they must be included as "plant clericals."

Historically, workers who perform clerical duties in close association with the production process and production employees are included in a production and maintenance unit as "plant clericals," even though they may exercise secretarial skills and are classified as "clerks."¹⁴

All of the clerical employees in issue here were initially hired into craft classifications, but they were actually employed in, or subsequently transferred into, clerical positions. Accordingly, the discussion below describes their current employment duties and refers to their craft-related work or classifications only where pertinent.

Material Take-Offs (MTOs): Scott McComas, Teddy Bragg, James Bennett, Carroll Garnes, Paul Van Meter, Charles White, Mary Greer, and Michelle Airhart: The function of a MTO is to determine—by reading construction blueprints and consulting frequently with craft employees—what materials and equipment are needed for particular jobs, and then to place orders for those items, after ascertaining from warehouse and toolroom employees that the needed equipment and materials are not in inventory. McComas, Bragg, Bennett, Garnes, and Van Meter perform this function in separate, but adjacent, office trailers on the DuPont Belle project that they each share with their supervisor—a craft general foreman or superintendent. In addition, Bragg spends approximately 40 percent of his day in the warehouse or at construction areas in "the field." Bennett, classified as a structural welder, has maintained his welder certification, and he continues to assist welders daily by physically delivering welder's materials to field locations or distributing them from his office trailer to craft people who come requesting such items. Garnes and Van Meter perform their MTO work in the same office trailer, but both are occasionally pulled out on weekdays to fill in on short-handed construction crews, as electrician and instrument fitter helper, respectively. In addition, Van Meter occasionally performs construction work on weekends. White performs the same MTO duties in an electrical craft trailer on the Rhodimet site, and like Bennett, maintains an inventory of small, electrical items, which he dispenses to electricians who come there daily. He testified that he also delivers items to the field about 10 times a week, sometimes by operating a forklift. He also spends 3 or 4 days a month performing warehouse duties as a replacement

¹³ *Hogan*, supra.

¹⁴ *Goodman Mfg. Co.*, 58 NLRB 531, 533 (1944); *Gordonsville Industries*, 252 NLRB 563, 591 (1980).

for the warehouse electrician helper when the helper is absent.

Based on the factors set out above, we shall include McComas, Bragg, Bennett, Garnes, Van Meter, and White in the unit as plant clericals because their primary function of ordering construction materials and equipment is intimately connected to the construction process and requires regular and substantial work contacts with unit employees. In this regard, they must frequently check on inventories in the warehouse and toolroom as well as consult with craft persons with respect to needed equipment and material.¹⁵ We also note that Bragg and Bennett spend a significant amount of time in the field and that White and Bennett have additional daily contact with craft employees in dispensing materials from their office trailers.

By contrast, Greer and Airhart, who work at the Rhodimet site, testified that they are not currently performing MTO work. Greer is engaged in selling off, or closing out, steel accounts by dealing primarily with engineers and company representatives of the Employer and Rhone-Poulenc. She has only incidental contact with craft employees when she tours the field with engineers and company personnel to audit completed work. Airhart spends about 80 percent of her time in an office in building 36 with her supervisor, the mechanical superintendent, generating a weekly quantities report on how much pipe construction has been completed and a daily manpower report. The remainder of her time is spent filing blueprints, distributing timesheets and other engineering reports to foreman in-boxes in the various craft offices, and typing correspondence on a computer for her general foreman. Although she is classified as a pipefitter helper, she testified that she never goes into the field. Rather, she testified, she has no contact with any craft people below the foreman level and, contrary to the allegations of the Employer, has never done any pipefitter helper work. She testified further that she was given her job because of her prior computer experience. We shall exclude Greer and Airhart from the unit as office clericals based on the accounting nature of their work and their limited amount of work contacts, if any, with production employees.

Toolroom/Warehouse Clerks: Leroy Buffington, Harold Gallaher, Mike Mitchell, David Cottrell Jr., and Tammy Barr: Buffington works as a clerk in the main toolroom on the Union Carbide South Charleston site and is responsible for requisitioning the tools and equipment needed by each craft on the construction project. Buffington also deals with craft employees on a daily basis by issuing them tools and taking custody

of their brass until the tools are returned.¹⁶ He also is responsible for inspecting the condition of tools and equipment after each use and for seeing to their repair, if necessary. Gallaher performs the same function at the Union Carbide's Institute branch toolroom. We shall include Buffington and Gallaher in the unit because they play a substantial role in the construction process and maintain continuous interaction with unit employees.¹⁷

Mitchell is a warehouse clerk located in an office/cage adjoining the warehouse at Union Carbide's Institute jobsite. He gives out materials and industrial gases to craft persons who come to his cage. He physically unloads the cylinders of gases and other incoming materials as well as bags and loads the cylinders and other items being sent out of the warehouse to field locations. He is assisted in this work by warehouse helper Tom Grant and warehouse clerk Marta Spry, both of whom the parties agreed to include in the unit.

Cottrell Jr. works at a desk in the warehouse at the Triton Island portion of the Union Carbide South Charleston project. He unloads, checks, and stores incoming materials in bulk storage areas, and segregates requisitioned-for materials by bagging and tagging it and moving it from bulk storage areas to pickup sites in the field. He uses a forklift for moving and delivering the heavy materials. He also fills out requisition forms for materials requested by craft persons and submits it to materials control clerk Jim White, who works in an adjoining office trailer. Cottrell works regularly with two warehouse employees who are included in the unit. One is Mike Beckett, with whom Cottrell works in the warehouse, and the other is Mark Drake, whom he frequently assists in dispensing materials to foremen, journeymen, or helpers from an adjoining trailer which is stocked by a vendor on consignment. We shall include Mitchell and Cottrell Jr. in the unit in view of their construction related duties and substantial contacts with unit employees.¹⁸

Barr works as a warehouse clerk in a warehouse office on the Rhone-Poulenc site. She shares the office with a clerical employee and a runner, who are both excluded from the unit, and a toolroom employee, Gary Hedrick, whom the parties agreed to include. Barr reports 15 minutes early each day to assist Hedrick in inspecting respirators to be used by construction employees, but spends most of the day inside the office working at the computer preparing a report

¹⁵ See *Container Research Corp.*, 188 NLRB 586 (1971) (material planners).

¹⁶ Each craft employee is issued a brass plate, with an identifying number, to be presented at the beginning and end of each workday in place of a timecard. Thus, craft employees are said to "brass-in" or "brass out."

¹⁷ *Sohio Natural Resources*, 237 NLRB 1261, 1262 (1978) (warehouse employees).

¹⁸ *Astronautics Corp.*, 210 NLRB 652 (1974) (stockroom employees).

of materials received the previous day and inputting data with respect to new deliveries. She also files purchase orders for materials already received. Although craft persons come to the warehouse to pick up construction-related items, her contacts with them are limited to filling out forms requesting specialty orders, such as sending out pipe to be painted. We shall exclude Barr as an office clerical. Her contact with Hedrick is incidental to her primary clerical duties. Moreover, unlike the other warehouse clerks, her clerical responsibilities bring her into contact with unit employees only when she is requested to fill out a form; she does not handle, move, load/unload, or transport materials used in construction nor interact with craft unit employees in this regard as do the other clerks.

Document Control Clerks: Donna Ray, William Williams, and Floretta Haynes: Ray works in a trailer office at DuPont Belle, receiving, date-stamping, and distributing all blueprints and other construction-related drawings to the MTOs and maintaining copies for the mechanical department. Field employees, including journeymen and helpers, come to her office daily to look at or to obtain copies of specific drawings. Ray testified that she occasionally performs field work in addition to her primary document control chores; the most recent instance occurred about 2 months earlier, when she assisted a sketcher in the field a few times, for a few hours each time, by holding a tape measure while he took certain measurements. She also performed an earlier 6-day stint as a pipefitter helper during a plant shutdown.

Williams and Haynes work together in a document control trailer office with the general superintendent of the Rhodimet worksite.¹⁹ They both have daily contacts with unit employees who, at the time of the hearing, came into the office for drawings relating primarily to insulation work then in progress and for copies of special installation instructions from the insulation manufacturer. Williams has the additional responsibility of surveying the amount of completed insulation work in the field. Williams and Haynes occasionally take blueprints to field locations, and Haynes picks up mail at the post office for the superintendent's secretary. In addition, Haynes sometimes backs up the secretary by typing letterheads or addresses on envelopes, although she lacks secretarial skills.

We shall include Ray, Williams, and Haynes in the unit as plant clericals because their primary function of maintaining blueprints and drawings is directly related

to construction work and in carrying out these duties they provide daily assistance to unit employees.²⁰

Material Control Clerks: Earl Nelson and Jim White: Nelson works at Union Carbide's South Charleston site and White at its Triton Island location. Both call preapproved outside vendors to make purchases of materials under \$400 and to expedite pending orders. Nelson spends about half of his time dealing with outside vendors and expediting deliveries from Union Carbide's main warehouse at the Institute jobsite; he spends the balance of his time performing assigned duties in the warehouse adjoining his building. Nelson assists unit warehouse employee Dwight Ford daily in general warehouse work, including waiting on foremen and craft employees who come to the warehouse for construction materials. He also uses a forklift for receiving and storing materials as well as delivering items to field locations.

White is engaged in purchasing 65–70 percent of the time, and he also approves invoices for rental equipment. Unlike Nelson, White does not perform warehouse work on a daily basis, although he has assisted in the Triton Island warehouse on two or three occasions in the past few months; he also does not carry materials to the field. White's contact with craftsmen is limited to those occasions when they come to his office to inquire about pending orders.

Nelson's performance of warehouse duties and his substantial contact with unit employees is similar to the duties of warehouse clerks Mitchell and Cottrell Jr., whom we, as discussed above, included in the unit. Accordingly, we shall include Nelson in the unit. Because the evidence fails to show that White regularly performs warehouse work or that he interacts with unit employees on a regular basis, however, we shall exclude White from the unit.

Quantities Expediter: David Burr: Burr, formerly a cost engineer for the Employer, was recently brought into the Union Carbide superintendent's complex on the Institute project where he works under the direct supervision of the technical services manager. By referring to blueprints and Union Carbide's standard labor codes, Burr measures or "takes off" the remaining quantities of work to be done in order to create or update a target manpower budget. Initially, he consults with the scheduler, who knows when projects will start, to determine his priority of takeoff work. After he enters his calculation on a quantity ledger sheet, he forwards it to the cost engineer and to cost clerk Teresa Angell to be fed into the automated craft ledger system. Burr's only field contacts, which occurred four times in a single 2-week period, are to clarify, if necessary, what man-hours might be required to perform a particular installation. He will seek out a journeyman

¹⁹ The Petitioner argues in its brief that Haynes is supervised by Williams. Although there was some testimony indicating that Williams had initially trained Haynes and also might have supervised her during her training, there is no evidence on the record to show that Williams is currently supervising Haynes.

²⁰ See *Risdon Mfg. Co.*, 195 NLRB 579, 581 (1972) (production control clerks).

only if a foreman or general foreman is not available. As Burr performs a cost accounting function and his dealings are mainly with nonunit personnel, i.e., the scheduler, cost engineer and foremen, we find that he should be excluded from the unit.²¹

Cost Clerks: Teresa Angell, Robin Hinzeman,²² and Rose Cassell: Like Burr, the three cost clerks also are under the supervision of the Union Carbide's technical services manager, although they work at three separate locations. Angell occupies an office close to Burr's at the Institute site; Cassell works in the cost scheduler's office trailer on Triton Island, and Hinzeman is in an office with the technical specialist and electrical foreman on the South Charleston project.

Angell inputs Burr's ledgered "quantities" into the computer to generate a construction progress report. She also enters variances in materials used and labor expenditures for both the Institute and South Charleston sites. Although her duties do not require direct contact with craft persons, Angell testified that when she has free time, she goes into the field to familiarize herself with construction activities. She has gone on safety walk-throughs and assisted craft employees by handing them tools or running conduit on a number of occasions. She also participates once a month in project manager's advisory team meetings with helpers from every craft to improve communications between field and office employees. Although she has a commitment to attend the meetings with helpers, her field time and activities are entirely voluntary.

Hinzeman and Cassell both review timesheets from the previous day and verify, usually by consulting with foremen, that proper labor codes have been applied to the type of work performed. Cassell inputs production-related cost information into the computer to generate weekly turnaround reports, and Hinzeman does a substantial amount of typing of safety procedures, forms, and spreadsheets. Both distribute revised blueprints to supervisory personnel. Cassell has contacts with craft persons when she makes "spot checks" (once a week or less) in the field to verify the accuracy of work identified as "completed" on the turnaround report. Hinzeman has, on seven or eight occasions over a 5-month period when her office work was slow, helped out in the warehouse by receiving and unloading materials, checking invoices, and inputting that information into the computer. Hinzeman, like Angell, is not required to work in the warehouse as part of her regular, assigned duties. Rather, their efforts are strictly voluntary and are performed only during slack periods in their regular job duties.

²¹ *Container Research*, supra at 587 (estimator).

²² Hinzeman is sometimes referred to as a "general clerk" in the parties' briefs. This minor discrepancy does not affect the outcome here.

Based on the above evidence, we find that the cost clerks Angell, Hinzeman, and Cassell principally perform an accounting function and have insubstantial work contacts with unit employees, and so should be excluded from the unit.²³

Clerks: Paula Bratton, Cathy Fluellen, Ashley Hughart, Christy Lane, Nancy Shinn, Colleen Bing, and Walter Martin: Bratton and Fluellen both work in Building 400 on the Union Carbide South Charleston project. Bratton works in an office with the superintendent and general foreman of the mechanical and instrumentation department, and Fluellen works in the pipe office under the supervision of the mechanical superintendent.

Bratton, who is classified as an electrician helper, testified that she currently neither performs any work in the field nor has any contact with unit employees. Bratton reviews timesheets to verify that labor charges are allocated to the correct craft, and she documents weekly work quantities for the turnaround report of man-hours. In addition, she files, make copies of papers, and keeps a record of instruments and calibrations in a notebook. She testified that she runs numerous errands, including taking supplies or small items to a foreman in the field about once every 2 weeks and occasionally chauffeuring craft employees to the field. We find that Bratton should be excluded from the unit based on the nature of her job duties, which are similar to those of MTOs Greer and Airhart whom we excluded, supra, and because she lacks regular contact with unit employees.

Fluellen is classified as a pipefitter helper but does not perform any of those duties in her current position. Rather, she picks up timesheets daily from four foremen, checks their cost codes, and forwards them to Hinzeman. She maintains copies of field change orders, makes copies of blueprints, and updates wage rate changes. Fluellen also does material takeoffs from blueprints and writes out requisitions for foremen who need materials, and takes them to purchasing. She testified that she goes out to the warehouse in her building daily to see if there are small parts, e.g., gaskets, nuts, or bolts, that need to go to the toolroom at Triton Island and, if so, she takes them there herself. In addition, if she is notified by warehouse employee Dwight Ford that ordered parts have arrived, she will, with Ford's assistance in loading, drive the parts to the toolroom and get toolroom employee Buffington to assist in the unloading. Fluellen estimates that her deliveries of ordered parts occur usually once a week. She also chauffeurs new hires and craft employees to and from field locations several times a week. We find that Fluellen's material takeoff duties, her frequent transport of materials and personnel in the field, and her

²³ *Container Research*, supra at 587 (cost coordinator).

regular and substantial contact with warehouse and toolroom employees warrant including her in the unit.

Lane and Hughart work in offices at Union Carbide's Insitute worksite. *Lane* is supervised by the carpenter superintendent and general foreman with whom she shares an office in the superintendent's building. She operates a computer to write memos, update all civil and structural department wage rates, and to track forms and maintain document control for search and retrieval of blueprints and other drawings. She also maintains data pertaining to licenses for trucks and heavy equipment and employee training/retraining. Lane occasionally goes to other buildings to obtain drawings or delivers drawings to foremen in the field. She testified that she has contact with craft employees at least two or three times each day when they come to the office and ask her to fill out a "material pass," a document authorizing them to carry materials off the jobsite. We find that Lane's duties are typical of an office clerical employee, and that her contact with craft employees is limited to ministerial matters. We therefore shall exclude her from the unit.

Hughart is a pipefitter helper who works 4 10-hour days in the pipe shop under the supervision of the mechanical superintendent. Her office duties include writing requisitions for the reordering of materials, such as rods for welders, and handling timesheets, early-off forms, and field change orders. She also keeps a computer log of drawings and the retraining schedule for craft employees. Hughart does not carry any materials into the field during the week. However, in addition to her office duties, Hughart regularly performs construction work. Thus, whenever the pipe department works overtime on weekends, Hughart works alongside the craft employees as a pipefitter helper. Typically, weekend work is done on Friday, Saturday, and Sunday, and the record indicates that Hughart has worked at least one, and usually more than one, weekend each month for several months. It thus appears that Hughart works a total of 16 days in 4 weeks as a clerical and between 3 to 6 days (or 20-40 percent of the time) performing construction work during that same period of time. We find that Hughart's time spent in construction work is both regular and substantial, and thus qualifies her for inclusion in the unit as a dual status employee.²⁴

Martin is classified as a mechanic's helper, but he shares an office adjoining the repair garage on the Institute worksite with the mechanics' foreman. Martin's duties include picking up the mail, opening bills, affixing charge numbers, obtaining the foreman's authorization for payment, and then forwarding them to invoice for auditing. He uses the computer each month to change and print out safety inspection dates for all

the equipment used on the South Charleston and Institute sites, and he also tracks fuel use by vehicle and by job on a weekly basis. Martin types requisitions for equipment purchases and rentals, and he orders vehicle parts to replenish the garage's inventory. He also allocates timesheet charges to specific equipment repair. Although he is classified as a mechanic's helper, Martin testified that there are two mechanics and two full-time mechanic's helpers on duty in the garage, and that he has actually assisted in mechanical repairs on only a handful of occasions. Martin indicated that he is called on only when they are short-handed, and then mainly to help with a wrench on tight lugnuts, or to lift or move heavy parts or equipment. We find that Martin performs essentially an office-clerical function, with insufficient contact with unit employees, and that he should be excluded from the unit.

Bing and Shinn are both employed on the Rhodimet project. *Shinn* is classified as a material-receiving clerk and works in an office trailer with, and under the supervision of, the manager of material control. She has an Associates degree in data processing and spends 80 percent of the time keypunching and filing lists of equipment and materials received, after first matching the invoices for materials received against the purchase orders. The remaining 20 percent of her time is spent in expediting activities. Thus, when a foreman or superintendent asks about equipment or parts which have not yet been received, it is Shinn's job to call the vendor for an estimated time of arrival. If Shinn is notified of an erroneous delivery to the field, she goes into the field to check the tag number and to notify the vendor of the error. We find that Shinn is an office clerical who has virtually no contact with unit employees. We therefore shall exclude her from the unit.

Bing is assigned to the pipe department. She does not work in an office but is assigned to the field. She works as an expeditor in getting blueprints, parts, valves, or fittings, or supplies from the warehouse and taking them to foremen, journeymen, or helpers in the field. For example, she looks up blueprints in the document control trailer, gets them copied by Floretta Haynes, and brings them back to a field foreman. In addition, she may be sent to the safety office for a copy of a safety permit. She is also called on a few times a week to perform man safety-watches when craft employees are working in an excavation of 4-5 feet in depth. Bing also spends a total of 10-15 minutes a day at a desk collecting timecards from foremen. In view of the substantial amount of time Bing spends in the field delivering necessary parts and equipment to various craft persons and performing safety-watches, we find that Bing is functioning as a plant clerical, and thus we shall include her in the unit.

²⁴ See *Avco Corp.*, 308 NLRB 1045 (1992).

Daniel Formula

The Petitioner at the hearing and in its posthearing brief requested the *Daniel*²⁵ formula for voting eligibility; the Employer reserved its position at the hearing, but did not discuss the issue in its posthearing brief.²⁶

On March 12, 1994, however, the Employer filed a motion to reopen the record, with supporting affidavits, alleging that all major construction at these three construction sites had been, or within 30–45 days would be, completed. The motion further asserts that the Employer would thereafter retain an employee group to perform supplemental maintenance and minor capital construction work which, within the next 60–90 days, “will consist almost entirely of continuous services no different from those found in production and maintenance units” at its other operations. The motion therefore argues that the significant change in the scope of the unit work renders the *Daniel* voting eligibility formula inapplicable in this case.

The Petitioner filed a response to the motion, pointing out that the Employer’s proffer does not claim that it is no longer seeking or accepting additional construction contracts from the client companies involved here. Moreover, it submits that the unstable nature of this Employer’s work force is no different from that experienced by other employers in the construction industry. The Petitioner further asserts that the Employer is requesting the Board to abandon the *Daniel* formula in the construction industry in favor of determining voter eligibility on a case-by-case basis—something the Board firmly rejected in its recent decision in *Steiny & Co.*, 308 NLRB 1323, 1327 (1992).

The Board finds that the *Daniel* formula is appropriate as the Employer is engaged in the construction industry and is currently performing construction work at various construction sites. As the Board stated in *Steiny*:²⁷

Because there is admittedly some degree of variety among construction employers and their hiring patterns, any attempt to distinguish between employers requires an elaborate and burdensome set of criteria to be applied and litigated at each hearing. These criteria, for example, must distinguish between employers who hire project-by-project, and those who have a so-called stable or

core group of employees. The employers with a stable group would presumably resemble industrial employers and, perhaps, obviate the need for the *Daniel* formula. Our experience, however, indicates that the line between these two types of employers is not distinct. Indeed, many employers are a hybrid of these two models of employment. Moreover, such criteria also would have to define the proper period for examination of the employer’s records regarding hiring and layoff “patterns.”

Further, we believe this additional level of analysis is unnecessary because application of the *Daniel* formula itself will, to a substantial extent, answer the question whether a particular construction employer is similar or dissimilar to an industrial employer, or whether it operates with or without a stable core of employees. Thus, if no employees are eligible by virtue of the formula, that shows the employer has an entirely stable work force whose voter pool should not and will not be augmented by intermittently employed employees. On the other hand, if application of the formula renders a number of other voters eligible, to that extent it has been demonstrated that the employer hires intermittently from a group of employees with significant contacts to that employer as determined by the formula.

In addition, the record shows that these client companies continuously expand, renovate, or retrofit their facilities and that the Employer enjoys “preferred contractor” status, i.e., it is given the first opportunity to bid on all or part of the work to be let. There is no evidence indicating that these companies will discontinue their previous pattern of expansion and renovation, or that the Employer will refrain from accepting such contracting work. Further, the Employer’s proffer fails to show that construction work at these projects would cease or become de minimis. Indeed, it concedes that minor capital construction remains. Also, it has proffered a Consolidated Manpower Forecast by Craft (March–December 1994), which shows that there will be employees in all 16 craft classifications through December 1994 and that the number of employees in 9 of those classifications will either remain constant or be materially unchanged. Accordingly, the Board denies the Employer’s motion to reopen the record.

Based on the above-cited considerations, the Board adopts the eligibility formula in *Daniel*, i.e., that former employees who have a reasonable expectation of employment in the foreseeable future are permitted to vote even though they are not presently employed by the employer on a jobsite. Thus, in addition to those employees hired and working on the election eli-

²⁵ *Daniel Construction Co.*, 133 NLRB 264 (1961), modified 167 NLRB 1078 (1967), reaff’d. in *Steiny & Co.*, 308 NLRB 1323 (1992).

²⁶ At the hearing extensive evidence was taken regarding the Employer’s contention that the unit was expanding at all of its construction sites and that an early election would improperly disenfranchise a great number of employees. In its posthearing brief, however, the Employer acknowledged that the expanding unit issue had become moot because the dates for the hiring of additional employees had been met.

²⁷ 308 NLRB at 1327–1328.

gibility date, also eligible to vote shall be all employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 days or more within the 24 months immediately preceding the eligibility date for the election hereinafter directed, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

Appropriate Unit

Accordingly, based on the foregoing and the stipulations of the parties at and after the hearing, we find

that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All construction and maintenance employees at the Employer's Kanawha County, West Virginia, sites, including the sites at E. I. DuPont at Belle, West Virginia; for Rhone-Poulenc at Institute, West Virginia; and for Union Carbide at Institute and South Charleston, West Virginia, including plant clerical employees, but excluding salesmen, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

[Direction of Election omitted from publication.]